

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DAVID N. SHEINFELD,

Plaintiff,

-against-

B. BRAUN MEDICAL INC., et al.,

Defendants.

ANALISA TORRES, District Judge:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/20/2024

23 Civ. 1622 (AT) (OTW)

**ORDER ADOPTING
REPORT AND
RECOMMENDATION**

On February 24, 2023, *pro se* Plaintiff, David N. Sheinfeld, filed this products liability action for failure to warn, design defects, and manufacturing defects in connection with an artificial disc replacement medical device for patients with degenerative disc disease. ECF No. 1. Defendants moved to dismiss the complaint for failure to state a claim and lack of personal jurisdiction under Federal Rules of Civil Procedure 12(b)(6) and (b)(2). ECF No. 9. On April 14, 2023, the Court referred the motion to Magistrate Judge Ona T. Wang for a report and recommendation. ECF No. 11.

After careful consideration, Judge Wang issued a Report and Recommendation (the “R&R”), proposing that Defendant’s motion to dismiss be granted pursuant to Rule 12(b)(6) for failure to state a claim, and that Plaintiff be given an opportunity to move to amend his complaint. R&R at 11, ECF No. 32. Despite notification of the right to object to the R&R, no objections were filed, and the time to do so has passed. *See* R&R at 12; Fed. R. Civ. P. 72(b)(2). When no objection is made, the Court reviews the R&R for clear error. *Santiago v. Colvin*, 12 Civ. 7052, 2014 WL 1092967, at *1 (S.D.N.Y. Mar. 17, 2014). The Court finds no clear error. Accordingly, the Court ADOPTS Judge Wang’s R&R in its entirety.

By **March 19, 2024**, Plaintiff may request to amend his complaint to allege facts that (1) “the specific activL Device implanted in his spine was defective as a result of some mishap in the manufacturing process itself, improper workmanship, or because defective materials were used in construction”; and (2) “the defect was the cause of his injury.” R&R at 11–12. The Clerk of Court is directed to terminate the motion at ECF No. 9 and mail a copy of the R&R and this order to *pro se* Plaintiff.

SO ORDERED.

Dated: February 20, 2024
New York, New York



ANALISA TORRES
United States District Judge